



National Aeronautics and
Space Administration

Principal Center for Clean Air Act Regulations

REGULATORY ALERT

Council on Environmental Quality issues notice and request for comments on guidance on Categorical Exclusions under NEPA

This information is provided as a service of NASA's Clean Air Act Principal Center to inform you of regulatory developments. If you have further questions and/or need assistance with this matter, please contact Sharon Scroggins/MSFC (256.544.7932, sharon.scroggins@nasa.gov).

Introduction

The Council on Environmental Quality (CEQ) has established a National Environmental Policy Act (NEPA) Task Force to develop and implement recommendations for making the NEPA process effective and efficient. The CEQ has developed proposed guidance for "Establishing, Revising, and Using Categorical Exclusions (CatExs) under the National Environmental Policy Act" ([71 Federal Register \[FR\] 54816](#)) to assist federal agencies in developing and using CatExs for actions that do not have significant impacts on the environment and to eliminate the need for unnecessary paperwork. Comments on this guidance are requested by 27 October 2006.

Background

NEPA was signed into law on 1 January 1970 to establish national environmental policy and goals for the protection, maintenance, and enhancement of the environment. NEPA requires federal agencies to integrate environmental considerations into their decision-making processes. It also requires agencies to assess and document the environmental impacts of their proposed actions and reasonable alternatives to those actions.

There are three possible levels of NEPA documentation that correspond to the anticipated level of impact to the environment:

- A CatEx can be used when no significant impact on the natural or human environment can be easily demonstrated without the use of detailed analyses. CatExs are established individually by each federal agency.
- An environmental assessment (EA) can be used when analyses are required to demonstrate that the proposed action will not produce a significant impact on the natural or human environment.
- An environmental impact statement (EIS) must be used when the proposed action will produce a significant impact on the natural or human environment.

NEPA analyses consider possible impacts on air quality, surface water quality, wastewater, groundwater, solid waste, noise, safety, threatened and endangered species (TES), archeological remains and historical sites, vegetation, wetlands, and environmental justice.

NEPA analysis must be completed during the planning phase of a new project, before beginning any construction activities relating to the project. It is important to include all aspects of the proposed action, including the construction, operation, and decommissioning of the proposed action.

Congress established the CEQ to ensure that federal agencies meet the requirements associated with NEPA. The duties and functions of the CEQ include the following:

- Gathering information about the conditions and trends in environmental quality.
- Evaluating federal programs in light of the goals established in Title I of the Act.
- Developing and promoting national policies to improve environmental quality; and conducting studies, surveys, research, and analyses relating to ecosystems and environmental quality.

In 2002, the CEQ established the NEPA Task Force and charged it with reviewing current NEPA implementation practices and procedures to identify opportunities to improve and modernize the NEPA process.

NASA has established NASA Procedural Requirement (NPR) 8580 to address the implementation of NEPA; this NPR includes a list of the agency's CatExs. NASA's requirements under NEPA also are found at 14 *Code of Federal Regulations* (CFR) 1216.300-321: Procedures for Implementing NEPA.

Summary of CEQ's Proposed CatEx Guidance

Overview

The CEQ's proposed guidance on "Establishing, Revising, and Using CatExs under NEPA" provides an overview of the following:

- Establishing and revising CatExs.
- Involving the public.
- Documenting the development, revision, and use of CatExs.
- Periodically reviewing CatExs.

Establishing and Revising CatExs

The purpose of a CatEx is to eliminate the need for unnecessary paperwork and effort under NEPA for categories of actions that normally do not warrant preparation of an EIS or EA. The text of a proposed CatEx should clearly define the category of actions, as well as any physical or environmental factors that would constrain its use. When developing or revising CatExs, federal agencies should consider the following:

- Developing a CatEx when they identify a class of actions without significant environmental impacts or to respond to changes in mission or responsibilities for new activities.
- Providing for extraordinary circumstances that function to identify the atypical situation or environmental setting where an otherwise excluded action merits further analysis and documentation in an EA or an EIS. For many agencies, their existing extraordinary

circumstances provisions (often presented as a list) will suffice. However, an agency may develop extraordinary circumstances that specifically relate to the new CatEx and propose them in conjunction with the CatEx.

- Reviewing Findings of No Significant Impact (FONSI) from past NEPA documentation to identify trends that may reveal the need to create a new or revised CatEx.

A federal agency may use a variety of sources of information to substantiate a new or revised CatEx including, but not limited to, the following:

- Evaluation of implemented actions
- Impact of demonstration projects
- Information from professional staff and expert opinion or scientific analyses
- Others' experiences, also known as benchmarking

Federal agencies should follow the overall process described below for establishing a CatEx:

1. Draft the proposed CatEx based on experience, indicated in supporting information.
2. Consult with the CEQ about the draft proposed CatEx.
3. Consult other federal agencies with similar procedures, jurisdiction by law, or special expertise regarding the category of activities and their effects.
4. Publish a notice of the proposed CatEx in the FR for public review and comment.
5. Consider public comments in developing the final CatEx.
6. Consult with the CEQ about the final CatEx to obtain a determination of conformity with NEPA and the CEQ regulations.
7. Publish the final CatEx in the FR.
8. File the final CatEx with the CEQ.
9. Make the final CatEx readily available to the public.

Involving the Public

Engaging the public in the environmental aspects of federal decision-making is a key aspect of NEPA, and federal agencies should consider increasing the level of public involvement in establishing CatExs beyond publication of the CatExs in the FR for review and comment.

FR notices requesting comment on proposed CatExs should do the following:

- Describe each proposed CatEx and provide the proposed text.
- Summarize the agency's rationale and history behind the development of the CatEx and advise the public about how to access the agency's supporting information, including a link to a website containing the supporting information, when practicable.
- Define all applicable terms.
- Summarize how each proposed CatEx fits into the existing agency's NEPA implementation process.

- Explain how extraordinary circumstances, and possibly other factors such as connected actions and cumulative impacts, may limit the use of the CatEx.
- Explain available avenues for public comment on each proposed CatEx.

The federal agency should tailor the type and length of the public involvement to the nature of the proposed CatEx and its perceived environmental effects.

Documenting Development, Revision, and Use of CatExs

Each federal agency should decide if a CatEx determination warrants preparing additional documentation to establish an administrative record. If a record is prepared, it should cite the CatEx used and show that the agency considered the following:

1. How the action fits within the class of actions described in the CatEx.
2. Whether there are any extraordinary circumstances that would preclude the project or proposed action from qualifying as a categorically excluded action.

Most federal agencies do not routinely notify the public when they use a CatEx for a proposed action; however, CEQ encourages federal agencies to involve the public in some manner (such as notification or scoping) in situations where there is a high public interest in the proposed action, or when the public can provide assistance in determining whether a proposal involves extraordinary circumstances or cumulative impacts.

Periodically Reviewing CatExs

CEQ encourages federal agencies to develop procedures for identifying and revising CatExs that no longer effectively reflect current environmental circumstances or where agency procedures, programs, or missions have changed. A federal agency can evaluate this aspect by tracking information provided by agency field offices (or Centers). In such cases, a federal agency review of a CatEx could consist of e-mails, memorandums, and letters from field offices (Centers) that include observations about the effects of implemented actions, and public input regarding the actions and their environmental effects. Another approach is through a comprehensive program review. Program reviews can occur at various levels (such as NASA Center or Headquarters office) and on various scales (geographic location, project type, or as a result of an interagency agreement).